

## **SERVICE AGREEMENT**

### **PARTIES**

This Agreement is effective this \_\_\_\_th day of \_\_\_\_\_, 2019 by and between

National HR Solutions, a Florida corporation (hereafter referred to as

"NHRS"), and \_\_\_\_\_ (hereafter referred to as "Client"), whose respective

addresses are set forth on the signature page of this Agreement.

### **I. UNDERSTANDING**

The purpose of this Agreement is to set forth the understanding of the parties with regard to the obligations and responsibilities of the parties in this professional employer organization (also known as employee leasing) contractual relationship. In this contractual relationship, it is the intention of the parties that they be in a co-employment relationship and not a joint employment relationship. The parties shall at all times act consistent with the intent that a co-employment and not a joint employment relationship is to exist between the parties. In this co-employment relationship the duties and responsibilities of the parties are allocated as set forth herein between the Client and NHRS. It is the intent of the parties that any wording contained in this Agreement which is mandated by law to be included herein shall in no manner be indicative of liability.

### **II. TERM OF AGREEMENT**

The initial term of this Agreement shall be one year (the "Initial Term"). Following the completion of the Initial Term, this Agreement shall automatically renew and remain in full force and effect for additional terms of one year, and shall remain in effect until either party gives written notice to the other party by delivering notice of termination as specified in Section X, below, at least THIRTY (30) days prior to the expiration of the Initial Term or any extension of the Initial Term. In addition, NHRS may at any time immediately terminate this Agreement or withhold its employees' services in the event of a material breach by Client of any of the terms of this Agreement or upon the occurrence of any of the events set forth in Section IX below. Termination or expiration of this Agreement shall not affect the continuation of any outstanding obligation or liability incurred by either party during the term of this Agreement.

### **III. ASSIGNED EMPLOYEES**

- A. NHRS agrees to co-employ certain employees, to the extent required by Florida law, to perform job functions identified by workers' compensation code classifications. Client warrants that the list of workers' compensation classifications as set forth on Exhibit A, is accurate and complete and that employees performing these job functions do so at the location specified in this Agreement as Client's address or at such other location as are set forth on Exhibit A. Client understands and agrees that prior written approval must be obtained from NHRS and NHRS' workers' compensation carrier prior to the addition of any workers' compensation classification or location to this Agreement.
- B. NHRS retains the right to change the classification codes, where necessary, to comply with the guidelines set forth by the National Council on Compensation Insurance (NCCI) or applicable state regulatory agency.
- C. Client expressly agrees and understands that no employee shall become employed by NHRS, covered by NHRS' workers' compensation insurance or any other benefit or term and condition of employment, or issued a payroll check, unless the individual has properly completed Form I-9 as required by law, and prior to commencing work for NHRS,

completed NHRS' new hire paper work, and W-4 withholding form. The obligation to obtain a properly completed I-9 Form is assigned to Client for all current and future assigned employees. NHRS shall not be obligated to obtain new I-9 forms for assigned employees upon their becoming co-employed by NHRS, where assigned employees have previously completed I-9 forms for Client. The new hire paper work and W-4 withholding form must be delivered to NHRS before the employee commences employment with NHRS. NHRS shall not be considered an employer for any employee until the new hire paper work and withholding forms (and Form I-9 as required by law) are received by NHRS for that individual and Client is notified that the employee has been hired by NHRS as an assigned employee. Client represents and warrants that all of its current employees have properly completed I-9 forms.

#### **IV. NHRS'S RESPONSIBILITIES PURSUANT TO THIS AGREEMENT**

- A. NHRS reserves a right of direction and control over assigned employees assigned to Client's location, and shall retain authority to hire, terminate, discipline and reassign assigned employees.
- B. NHRS assumes responsibility for the payment of wages to the assigned employees without regard to payments by Client to NHRS. In the event Client does not pay NHRS for all services rendered, NHRS may pay assigned employees at the minimum wage rate or minimum salary provided for in the Fair Labor Standards Act and pursuant to Florida law. This provision in no way affects the obligation of Client to pay NHRS for all services rendered and in no way affects the obligations of Client pursuant to state and federal law, including but not limited to the requirement to pay all assigned employees their regular rate of pay through NHRS (or directly, if otherwise required by law). Notwithstanding anything to the contrary, NHRS does not assume responsibility for payment of bonuses, commissions, severance pay, deferred compensation, profit sharing, vacation, sick, or other paid time off pay, or for any other payment, where payment for such items has not been received by NHRS from Client.
- C. NHRS shall prepare and distribute payroll checks to assigned employees, make the appropriate payroll deductions and collection of taxes, file the appropriate reports and make payment to proper governmental authorities for federal, state, and local income taxes, Social Security tax, federal and state unemployment insurance taxes and any other federal or state tax. NHRS shall maintain necessary records and comply with reporting procedures and NHRS assumes full responsibility for the payment of payroll taxes and collection of taxes from payroll on assigned employees regarding payroll reported to and paid by NHRS.
- D. NHRS shall secure workers' compensation coverage in such amounts as is required by applicable law. Should Client perform work in a state which allows Client to maintain its own workers' compensation policy and should NHRS agree to allow Client to maintain its own workers' compensation policy, NHRS shall be named as an additional insured and a certificate holder on such policy or policies. In addition, in such situations where Client maintains its own workers' compensation policy, Client shall at no time directly pay any workers' compensation premiums but shall instead, at least fourteen (14) days prior to the premium due date, remit to NHRS by ACH or wire transfer, or submit a cashier's check by overnight mail, next day delivery service, sufficient to cover the premium due from Client in order for NHRS to submit these funds to the carrier. NHRS shall have no responsibility in such situations where Client retains its own workers' compensation policy other than to remit to the carrier such payments as Client forwards to NHRS. It is the intent of the Parties that no volunteer, independent contractor, or any one else who is not an assigned employee of NHRS, be covered by any workers' compensation policy issued to NHRS.

- E. NHRS retains a right of direction and control over management of safety, risk, and hazard control at the worksite or sites affecting its assigned employees, including, with regard to assigned employees: responsibility for performing safety inspections of client equipment and premises; responsibility for the promulgation and administration of employment and safety policies; and responsibility for the management of workers' compensation claims, claims filings, and related procedures; however, Client acknowledges that NHRS, in either providing or not providing such assistance and responsibility, assumes no liability.
- F. Client and NHRS shall adhere to such drug free workplace program, if any as may be implemented by NHRS or its workers' compensation carrier.
- G. NHRS shall provide and coordinate the benefit programs, if any, set forth on Exhibit B beginning on the effective date specified on Exhibit B. An employee's available coverage and eligibility to participate in a given plan shall be governed by and subject to the terms and conditions of the plans offered by NHRS. NHRS and its applicable carrier reserve the right to change or substitute benefit plans or to implement cost increases. NHRS shall provide at least TWENTY (20) days prior notice of any such change, substitution, or cost increase. Client shall have TWENTY (20) days following its receipt of notice from NHRS regarding any such change, substitution, or cost increase to notify NHRS, in writing, of its termination of this Agreement. Such termination shall only occur after payment by Client of all sums owed NHRS. NHRS also reserves the right to cancel a plan due to lack of participation or a change in applicable law. No assigned employee shall be covered by any benefit plan until the assigned employee has prepared the appropriate submission form, submitted it to the carrier, been notified by the carrier of the assigned employee's acceptance into the plan, and paid the premium for the first month.
- H. With respect to any group health plan maintained by NHRS and set forth on Exhibit B which provides coverage to eligible assigned employees, NHRS assumes responsibility for proper COBRA administration, subject to timely and complete notification by Client of the occurrence of any "qualifying event." For these purposes any group health plan shall be maintained by NHRS only if the contract is between NHRS and the insurer. As of the effective date of this Agreement and only if assigned employees and Client participate in NHRS's group health plan, NHRS shall be responsible for current COBRA participants on Client's group health plan who are listed in Exhibit C, attached and incorporated herein by reference. Client warrants that all COBRA participants, at all times, were and remain eligible for coverage in accordance with federal law. Client shall be fully responsible for any group health plan maintained by Client.
- I. NHRS shall notify, in writing, all assigned employees of the relationship between NHRS and Client as well as the inception and termination of this Agreement. Client and NHRS agree that should any assigned employee raise an issue of discrimination, harassment, retaliation, or any other employment related issue, it shall be Client's responsibility to handle, investigate and resolve such issue(s). Should any investigation of such issue(s) occur and should the assigned employee and Client desire NHRS to be involved in such investigation of the issue(s), if NHRS, in its sole discretion, agrees to be involved in the investigation, NHRS' role shall be strictly limited. NHRS shall not be a decision-maker/joint employer, and NHRS' role shall be limited to conducting such investigation deemed appropriate by NHRS and attempting to facilitate a resolution of the issue(s) which is mutually agreeable to the assigned employee and to Client. The responsibility to resolve and/or end any such inappropriate conduct which may be occurring rests solely with Client.

## V. CLIENT RESPONSIBILITIES

- A. Client shall retain sufficient direction and control over the workplace and over the assigned employees as is necessary to supervise all day-to-day work activities of the assigned employees. In addition, Client shall retain such sufficient direction and control over the assigned employees and over the workplace as is necessary to conduct Client's business and without which Client would be unable to conduct its business, discharge any fiduciary responsibility that it may have, or comply with any applicable licensure, regulatory, or statutory requirement of Client. Such authority maintained by Client shall include the right to accept or cancel the assignment of any assigned employee.
- B. Client shall make any and all strategic, operational, and all other business-related decisions regarding Client's business. Such decisions and related outcomes shall exclusively be the responsibility of Client and NHRS shall bear no responsibility nor liability for any actions or inactions by Client or by any assigned employee. Additionally, Client shall have sole and exclusive control over the day-to-day job duties of all assigned employees and NHRS shall have no responsibilities with regard to the assigned employees' performance of such day-to-day job duties. Furthermore, NHRS shall have no control over the job site at which, or from which, assigned employees perform their services. Control over the day-to-day job duties of assigned employees and over the job site at which, or from which, assigned employees perform their services is solely and exclusively assigned to Client. Client expressly absolves NHRS of control over the day-to-day job duties of the assigned employees and over the job site at which, or from which, assigned employees perform their services. Client shall be solely responsible for the acts, errors, or omissions of Client or any of the assigned employees and for the quality, adequacy, and safety of the goods or services produced or sold in Client's business.
- C. At the end of each pay period, Client shall obtain and provide to NHRS all records of actual time worked by each assigned employee, the status of the assigned employee as either exempt or nonexempt, and verify that this information is accurate and in compliance with the requirements of the Fair Labor Standards Act, other laws administered by the U.S. Department of Labor's Wage and Hour Division, and any applicable state law. Client shall be solely responsible for the verification of payroll information, including but not limited to verifying that wages, minimum wage, overtime, piece rate, commissions, and bonuses have been correctly calculated. In addition, Client shall be solely responsible for any and all liability to any assigned employee with regard to all aspects of Client's payroll, whether or not such payroll has been paid through NHRS, including but not limited to wages, minimum wage, overtime, piece rate, commissions, and bonus obligations to assigned employees. Client shall review all payrolls and payroll information provided to Client by NHRS to ensure that all data and paychecks are accurate and that no incorrect or fraudulent information has been supplied to NHRS. Client acknowledges that any failure on its part to timely review the documentation and paychecks provided by NHRS prior to the time that paychecks are disseminated to assigned employees shall be an absolute bar to any claim for damages against NHRS. Unless otherwise provided to Client by NHRS in writing, Client shall submit all time records for a given pay period no later than THREE (3) business days prior to the date paychecks are to be distributed to assigned employees. If Client fails to provide the necessary information as required, or submits changes to the information previously reported on time, the delivery of payroll checks by NHRS will be delayed and Client may be billed an out of cycle processing charge in the amount of \$10.00 per check, plus any out-of-cycle shipping charges. Client shall be solely responsible for incorrect, improper or fraudulent records of hours worked, for improper classification of assigned employees, and for any fraudulent, improper, or illegal activity engaged in by any assigned employee.
- D. Client also represents and warrants that all wages (including bonuses) paid to any assigned employee are to be paid through NHRS and that any such assigned employees will receive no additional wages in any form from Client. Client agrees it will be solely responsible for damages of any nature arising out of Client's failure to report to NHRS the payment to an

assigned employee of any remuneration for services rendered for Client. In addition, NHRS shall not be considered to be an employer of any individual for whom required payroll information is not supplied during any payroll period (except as may be required by law). Client assumes full responsibility for workers' compensation claims, benefit claims (including but not limited to health insurance claims and pension claims), tax obligations, employment discrimination claims, general liability claims, third-party claims, and any and all other obligations or claims pertaining in any way to any individual for whom payroll information is not supplied during any payroll period (except as may be required by law), or who is paid in whole or in part by Client, as a non-assigned employee, subcontractor, volunteer, independent contractor, or in any other capacity. NHRS shall have no obligation to provide workers' compensation insurance for subcontractors and for employees of subcontractors engaged or hired by Client. Client shall not, directly or indirectly, engage or hire any independent contractor or subcontractor that does not have workers' compensation insurance coverage with respect to its employees. Client shall obtain a certificate evidencing workers' compensation insurance coverage with respect to any independent contractor, subcontractor, and the employees of any such independent contractor or subcontractor engaged or hired by Client. It is the intent of the parties that in no event will any independent contractor, subcontractor, volunteer, non-assigned employee, or any of the aforementioned's employees be covered by NHRS' workers' compensation policy or be considered an employee of NHRS.

- E. Where required by law or regulation, NHRS shall have the right to use Client's state identification numbers for unemployment tax reporting purposes. In such states, Client shall provide NHRS with its state identification number used for reporting state unemployment insurance, and shall forward all state unemployment information and notices to NHRS within FIVE (5) business days of receipt. In the event applicable law affords NHRS the option to report under Client's state identification number, NHRS shall have, at its discretion, the right to do so. In the event NHRS reports under its own number, then Client shall notify the state or states in which it operates that unemployment shall be reported under NHRS' identification number.
- F. While NHRS shall retain a right of direction and control over the management of safety, risk and hazard control involving assigned employees performing work at Client work sites, as may be required by applicable local, state and federal laws, ordinances, and regulations, compliance with all applicable laws, ordinances, and regulations related to such matters is a responsibility of Client. At its own expense, Client shall provide a suitable place of employment for all assigned employees, which shall comply with all applicable local, state and/or federal laws, ordinances, and regulations related to occupational health and safety, and Client agrees to provide all facilities, supplies, equipment, training and all other necessary items that may be required by assigned employees to perform the employee services. Client represents that its working environment, equipment, machinery, supplies and training for existing employees currently meet all state and federal OSHA standards and that they will be maintained in compliance with such standards during the duration of this Agreement. Client is responsible for compliance with safe work practices and the use of protective equipment imposed by controlling federal, state and local government, as well as any required by NHRS' workers' compensation carrier. Client is also responsible to comply with all applicable laws, ordinances, and regulations related to environmental, equipment, machinery and all other matters affecting assigned employee safety. Client further agrees to comply with any NHRS workers' compensation light-duty requirements as directed by NHRS, including reinstatement of assigned employees in a light-duty capacity, and shall comply with such Drug Free Workplace Act policies, if any, as may be implemented by NHRS. Such Client light-duty obligations shall survive termination or expiration of this Agreement.
- G. Client shall comply with any and all safety requirements and recommendations made by NHRS. Client also shall establish and maintain a safety program in accordance with state and/or federal laws and regulations, along with any committees, programs, policies, plans and

training required under state and/or federal laws and regulations pertinent to professional employer organizations and their clients.

- H. If an assigned employee is injured, Client shall immediately report the accident and injury to NHRS, and shall cooperate in conducting any investigation related to the accident and injury. If Client fails to accommodate any assigned employee released for light-duty assignment, then Client shall pay to NHRS all workers' compensation wages disbursed to such assigned employees which should have been paid in the form of earned wages for performing light-duty services. In the event Client or any assigned employee fails to notify NHRS within FORTY- EIGHT (48) hours following a work-related accident or injury, Client shall immediately reimburse NHRS for any fees or penalties imposed by NHRS' insurance carriers or any state or federal agency.
- I. Client acknowledges that NHRS maintains for eligible assigned employees only the employee benefit plans set forth in this Agreement. Any other employee benefit plans maintained by Client, regardless of whether they provide a benefit to the assigned employees, shall be the sole responsibility of the Client, and shall not duplicate or otherwise conflict with the benefits provided by NHRS. Client will provide to NHRS, written statements of its policies regarding all employee benefit programs related to assigned employees. Such policies will comply with all local, state, and/or federal, governmental laws, ordinances, and regulations.
- J. Client retains all obligations for the continuation of coverage for any current COBRA participants as well as for any and all eligible employees at the time of termination or expiration of this Agreement if group health insurance is not provided to assigned employees pursuant to this Agreement. If NHRS' group health insurance coverage, if any, has been accepted pursuant to this Agreement, upon termination or expiration of this Agreement, for any reason, Client shall obtain group health insurance coverage for all former assigned employees, and shall assume from NHRS all responsibility and obligation for the continuation of coverage for any COBRA participants listed in Exhibit C, as well as for any and all eligible assigned employees at the time of termination or expiration of the Agreement for the remainder of their COBRA eligibility period. In the event Client fails to provide said group health insurance, Client shall pay an administrative fee to NHRS in the amount of ONE HUNDRED and NO/100 (\$100.00) dollars per month (this sum is in addition to the premium payment payable by the applicable employee and/or family member/dependent), per former assigned employee who is a COBRA participant (the fee shall also be applicable for a family member/dependent who is receiving COBRA benefits through NHRS where the former assigned employee is not receiving COBRA benefits) under NHRS' plans. The Client acknowledges that this amount is reasonable to cover NHRS' expense in extending continued health care coverage to the assigned employees and this amount is not a penalty. Nothing in this provision shall be construed or interpreted as precluding or limiting NHRS' right to pursue damages in a court of law or equity, which arose as a result of Client's failure to obtain and provide insurance as set forth herein.
- K. Client shall immediately report to NHRS all complaints, allegations or incidents of any tortious misconduct or workplace safety violations, regardless of the source.
- L. Client shall provide, at its own expense, reasonable access and accommodations as required by the Americans with Disabilities Act, and any regulations related thereto. In addition, Client shall comply with the guidelines and provisions of the Americans with Disabilities Act in its determinations of individuals it desires to hire, promote, place at certain Client work location(s), or fire.
- M. Where applicable, Client shall comply with the Worker Adjustment and Retraining Notification Act ("WARN"), and will give NHRS at least SIXTY-FIVE (65) days' written notice prior to effecting any plant closing or effecting any mass lay-off as defined in WARN.

- N. To the extent the Family and Medical Leave Act ("FMLA") is applicable to Client, if at all, Client shall at all times comply with the FMLA and where the FMLA is applicable to Client, it is Client's responsibility to reinstate eligible assigned employees, and in all other manner to comply with the FMLA. This provision shall survive termination or expiration of this Agreement.
- O. Client acknowledges that during the term of this Agreement, Client will be the sponsoring employer for purposes of petitioning or applying for immigration visas for the employment of an alien selected for hire as an assigned employee. Client understands and agrees that it is Client's responsibility to obtain and maintain any necessary visas and to pay all associated costs. In addition, Client acknowledges that to the fullest extent allowed by law it has been allocated all responsibility to properly obtain and to maintain I-9 forms in conformity with the Immigration Reform and Control Act of 1986. A copy of all such I-9 forms will be timely and immediately supplied to NHRS.
- P. Client shall abide by and comply with all other applicable employment-related laws, ordinances and regulations (local, state and federal), including, but not limited to, those related to discrimination based on race, sex, disability, color, age, national origin, religion, marital status and union status, as well as those laws governing harassment of any nature, sexual harassment, and/or discrimination.
- Q. If any assigned employee is required to be licensed, registered or certified under any Federal, State, or municipal law or regulation, or to act under the supervision of such a licensed, registered or certified person or entity in performing the employee services, then any such assigned employee shall be deemed to be an employee of Client for such purposes but shall remain an employee of NHRS for unemployment and workers' compensation purposes (where NHRS is supplying workers' compensation coverage). Client shall also be solely responsible for verifying such licensure and/or providing such required supervision.
- R. NHRS does not assume any responsibility for and makes no assurances, warranties, or guarantees as to the ability or competence of any assigned employee. This Agreement in no way alters any responsibilities of Client which arise from Section 768.096, Florida Statutes, and Client assumes all responsibilities pursuant to Section 768.096, including, but not limited to, responsibility to perform any and all work history, reference checks and background checks on assigned employees. Additionally, Client assumes full and complete responsibility for the consequences of performing or failing to perform, initially and on an on-going basis, such work history, reference checks and background checks on assigned employees, including, but not limited to, driving record and accident record background checks on assigned employees.
- S. Any and all Affirmative Action Plan program development, administration, tracking, and the like, shall be the exclusive responsibility of Client.
- T. Client shall notify, in writing, all assigned employees, of the inception and termination or expiration of this Agreement. Client shall also immediately upon termination or expiration of this Agreement notify all employees of the termination or expiration of this Agreement and inform them that they are no longer covered by NHRS' workers' compensation policy.
- U. Upon termination or expiration of this Agreement, Client shall continue sole responsibility for all employment agreements and shall continue sole responsibility for all accumulated, but unused, sick leave, bonuses, commissions, severance pay, deferred compensation, profit sharing, vacation, sick, or other paid time off pay, and for any other payment, where payment for such items has not been received by NHRS from Client. Additionally, Client assumes full responsibility for payment of all unpaid wages of any sort.

## **VI. SERVICES FEES**

- A. For services to be rendered under this Agreement, NHRS shall be entitled to a setup fee and service fee as specified on Exhibit A hereto (in determining the total charges billed to Client, the component parts of the total charges may be less than or may exceed NHRS' actual costs of doing business. It is the intent of the Parties that the total charges billed to Client be one composite charge where Client accepts, and is satisfied with, the total bill, which is billed to Client, irrespective of what NHRS' actual cost of any component part of the total bill may be). All funds due NHRS are payable by wire transfer or ACH, prior to NHRS' issuance of payroll checks each pay period and shall be paid to NHRS following the end of each pay period, no later than THREE (3) business days prior to the date paychecks are to be distributed to assigned employees. A late payment charge of one and one-half percent (1-2%) will be added to all accounts not paid when due. Checks returned unpaid from Client's bank will be subject to the late payment charge plus any additional costs incurred by NHRS. An unpaid balance will also be subject to periodic charge of one and one-half percent (1-2%) per calendar month (or such maximum lesser interest amount if set by applicable law at a lower amount) until paid in full. NHRS reserves the right to at any time terminate this Agreement if full payment is not made when due.
- B. Should Client require additional services not included in this Agreement, the fee for any such additional services shall be negotiated and paid separately. The fees set forth on Exhibit A are subject to increase by NHRS based upon changes in local, state and/or federal employment law, increases in NHRS' cost of doing business (including, but not limited to, increases in taxes, premiums, fees, and/or assessments whether or not retroactive in nature), changes in insurance requirements or costs, costs directly attributable to Client or to assigned employees assigned to Client, or changes in Client's payroll. Upon written notification to Client from NHRS of a fee adjustment, Client shall have the right to terminate this Agreement by giving notice of termination to NHRS within FOURTEEN (14) days after receipt from NHRS of a notice of a fee adjustment, and after payment of all funds owed to NHRS by Client. Notwithstanding anything to the contrary contained herein, Client shall be liable for any retroactive increase imposed upon NHRS which are applicable to the period during which this Agreement has been in effect.
- C. Should Client and NHRS be agreeable to allowing Client to reimburse NHRS by means other than a wire transfer or ACH, Client shall at all times maintain a prepayment with NHRS in an amount equal to the total payroll and any direct and indirect costs related to that payroll for one average payroll period. These monies shall be maintained by NHRS to help guarantee performance of all terms, covenants, and obligations of Client under this Agreement. Client agrees that should any interest be earned on such prepayment, such interest shall belong to NHRS. If Client should fail to pay NHRS any payment or any other funds when due, NHRS may apply the prepayment to the amount due. NHRS shall refund any remaining prepayment within TWENTY (20) days after the termination or expiration of this Agreement, provided Client has fulfilled all of its obligations under this Agreement.

## **VII. INDEMNIFICATIONS**

- A. Client will provide proof of comprehensive general liability insurance coverage for its operations and all employees, with a minimum limit of liability not less than one million (\$1,000,000.00) dollars per occurrence. If any assigned employee will operate a vehicle owned or otherwise of any kind for Client, Client shall furnish liability insurance therefor against liability for bodily injury and property damage and against uninsured motorists, each with a minimum limit of liability no less than one million (\$1,000,000.00) dollars per occurrence. Such policies shall also include blanket contractual liability and personal injury liability coverage. In addition, if professional employees are assigned

pursuant to this Agreement, professional liability coverage will be secured and maintained by Client with a limit of liability of no less than one million (\$1,000,000.00) dollars. Client agrees, at its own expense, to include NHRS as an additional named insured on all of Client's insurance policies, including without limitation professional liability policies and fidelity bonds. Client shall at the request of NHRS deliver to NHRS a certificate evidencing such insurance and the agreement(s) of the insurer(s) that such insurance may not be canceled without TWENTY (20) days prior notice to NHRS. Any coverage that issues against the dishonest or criminal conduct or misappropriation of any funds engaged in by any assigned employee maintained hereunder, such as fidelity bonding, shall be at Client's expense. All insurance policies maintained by Client shall provide coverage which will be primary in the event of any claim. All insurance policies shall waive Client's subrogation rights in favor of NHRS. Client's obligation under this Section shall survive termination or expiration of this Agreement.

- B. Without regard to the fault or negligence of any party, Client hereby unconditionally indemnifies, holds harmless, protects and defends NHRS, and all subsidiary, affiliate, related, and parent companies, their current and former respective shareholders, non-assigned employees, attorneys, officers, directors, agents and representatives (all indemnified parties referred to as "NHRS Indemnified Parties") from and against any and all claims, demands, damages (including liquidated, punitive and compensatory), injuries, deaths, actions and causes of actions, costs and expenses (including attorney's fees and expenses at all levels of proceedings), losses and liabilities of whatever nature (including liability to third parties), and all other consequences of any sort, whether known or unknown, without limit and without regard to the cause or causes thereof or the negligence of NHRS or any NHRS Indemnified Party that may be asserted or brought against any NHRS Indemnified Party which is in any way related to this Agreement, the products or services provided by Client or by NHRS, the actions of any assigned employee, the actions of any non-assigned employee employed by Client, or of any other individual, including without limitation, any violation of any local, state and/or federal law, regulation, ordinance, directive or rule whatsoever, and all employment-related matters which shall include but not be limited to all matters arising under local, state and/or federal right-to-know laws, environmental laws, immigration laws (including I-9 obligations), all laws within the jurisdiction of the NLRB, OSHA, U.S. Department of Labor, and EEOC, including Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act (including without limitation those aspects relating to employment, public access and public accommodation), the WARN Act, ERISA, all laws governing wages and hours (including without limitation: prevailing wage rate; exempt and non exempt status; child labor; family and medical leave; and minimum wage and overtime matters), all laws governing race, sex, harassment of any nature, sexual harassment, retaliation, religion, national origin, color, age, veteran status, disability, union status, marital status, and all other types of discrimination prohibited by applicable law, all laws governing disclosed and undisclosed benefit plans, and all other labor laws.
- C. NHRS hereby unconditionally indemnifies, holds harmless, protects and defends Client, and all subsidiary, affiliate, related, and parent companies, their current and former respective shareholders, employees, attorneys, officers, directors, agents and representatives from and against any and all claims, demands, damages, injuries, deaths, actions and causes of actions, costs and expenses (including attorney's fees and expenses at all levels of proceedings), losses and liabilities of whatever nature (including liability to third parties), and all other consequences of any sort, arising out of the negligent or willful failure of any non-assigned employee employed by NHRS at its corporate office to comply with applicable workers' compensation, withholding tax, or ERISA laws, ordinances, and regulations, or where any action is taken by Client in compliance with a corporate NHRS policy, procedure, or direction, which is in writing and which is illegal under any applicable local, state or federal law.
- D. All indemnifications are and shall be deemed to be contractual in nature and shall survive the termination or expiration of this Agreement.

## VIII. BENEFIT PLANS

- A. Client acknowledges that NHRS has available employee benefit plans for the possible application to assigned employees. Any other employee benefit plans maintained by Client, regardless of whether they provide benefits to the assigned employees, shall be the sole responsibility of Client. All benefit plans shall be subject to the terms and conditions of eligibility and to such modifications as may occur to such plans.
- B. To assure compliance with the Internal Revenue Code, the Employee Retirement Income Security Act and other federal regulations, Client agrees to properly disclose to NHRS all information reasonably required by NHRS for the proper administration of its benefit plans. This includes, without limitation, certification by Client that it has disclosed to NHRS all information requested by NHRS in any benefit plan questionnaires including the following information: (1) any retirement plans currently or previously maintained by the adopting company or any related entities (within the meaning of the Internal Revenue Code Section 414, including 414(b), 414(c), 414(m) or 414(o)); (2) listed all of the owners, officers and shareholders (to identify those highly compensated and key employees for purpose of discrimination and top heavy testing); (3) listed/entered any family relationships for owners, officers and shareholders with co-employees. In the event that Client has failed to properly identify and/or properly complete any benefit plan questionnaire, Client agrees to indemnify NHRS Indemnified Parties for any and all liability associated therein.
1. Prior to Client merging its plan into the qualified NHRS Retirement Plan, or prior to Client transferring assets from its qualified plan into the NHRS Retirement Plan, Client understands and agrees that NHRS shall have the right to inspect all plan documents, records, IRS determinations, etc. for compliance with the law.
  2. If Client maintained a plan during the plan year (January 1 through December 31) prior to contracting with NHRS, Client agrees to provide NHRS with all required information (including but not limited to Box I wages and employee deferrals, employer matches, and contributions, etc.), prior to contracting with NHRS so that NHRS may conduct discrimination testing on a combined basis for the first plan year.
  3. Client agrees that in the event the NHRS Retirement Plan as adopted by the Client plan becomes top heavy as defined by the prevailing Internal Revenue Code and/or regulations, Client will be solely responsible for making a contribution to non-key employees assigned to it to satisfy the top heavy test.
  4. Client acknowledges that it is solely responsible for any matching, nonelective, or qualified nonelective contributions to be made to the NHRS plan on behalf of the Client's co-employees.
  5. If Client adopts the NHRS Plan, Client acknowledges that it has reviewed the adoption agreement for the NHRS Plan and agrees to comply with all of the obligations and responsibilities set forth in the terms of said adoption agreement.
- C. In addition, Client further warrants that no assigned employee will receive compensation originating from Client that will not be paid directly by NHRS. Client understands that any payment made to any assigned employee outside this Agreement may result in the NHRS Retirement Plan being disqualified. Should the NHRS Retirement Plan be disqualified as a result of the Client failing to report any compensation to covered employees, Client will be solely liable for any damages of any nature arising out of the failure to report such compensation to

NHRS.

- D. Client represents and warrants that there are no unfunded accrued benefits due to any assigned employee or due pursuant to any existing or previously existing employee retirement plan or union benefit plan.

## **IX. EFFECT OF TERMINATION**

- A. If for any reason payment is not made when due, Client agrees that NHRS will have the right to immediately terminate its performance hereunder and/or bring suit seeking damages. Upon termination or expiration of this Agreement, for any reason, or should Client fail to timely pay NHRS for its services, all of the employees shall be deemed to have been laid off by NHRS and immediate notification of this shall be provided by Client to employees who had been assigned pursuant to this Agreement. Client shall immediately assume all federal, state and local obligations of an employer to the employees which are not in conflict with state or federal law, and shall immediately assume full responsibility for providing workers' compensation coverage. NHRS shall immediately be released from such obligations as are permitted by law. If for any reason (whether or not required by applicable law) NHRS makes any payment to any of the employees after this Agreement has been terminated, NHRS shall be entitled to full reimbursement from Client for such expenditures.
- B. NHRS may also terminate this Agreement if, at any time, NHRS in its sole discretion determines that a material adverse change has occurred in the financial condition of Client, or that Client is unable to pay its debts as they become due in the ordinary course of business. This Agreement may also be terminated at any time by NHRS in the event of any federal, state, or local legislation, regulatory action, or judicial decision which, in the sole discretion of NHRS, adversely affects its interest under this Agreement or where NHRS in its sole discretion determines the workers' compensation risk is unacceptable. Where the workers' compensation risk becomes unacceptable to NHRS in NHRS' sole discretion, NHRS will provide Client fourteen (14) days written notice prior to termination. Additionally, notwithstanding anything to the contrary, NHRS may terminate this Agreement upon thirty (30) days written notice to Client. Any termination or expiration shall not relieve Client of any obligation set forth herein, including but not limited to its payment obligations to NHRS. In addition, in the event of any bankruptcy of Client, Client agrees that any unpaid amounts to NHRS will be considered as owing employment wages and taxes to assigned employees.
- C. In the event the Client terminates this Agreement before the 24 months, there will be a \$150.00 per employee termination fee equal to the number of highest count of active employees in any quarter throughout the term.

## **X. GENERAL PROVISIONS**

- A. Client acknowledges that it has not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement including but not limited to any statement made by any marketing agent of NHRS. Client acknowledges that NHRS has made no representation concerning whether NHRS' services will improve the performance of Client's business. Client acknowledges and agrees that any decisions made relative to cancellation or termination of any insurance policies in effect prior to the effective date of this Agreement are the sole responsibility of Client.
- B. Client acknowledges that NHRS shall not be liable for any Client loss of business, goodwill, profits, or other damages.
- C. Client specifically authorizes NHRS to conduct a credit and background reference check on Client and such officers of Client as NHRS deems appropriate in compliance with the

requirements of law.

- D. This Agreement is assignable by NHRS at its sole discretion.
- E. Client acknowledges and agrees that NHRS is not engaged in the practice of law or the provision of legal services, and that Client alone is completely and independently responsible for its own legal rights and obligations, regardless of any human resource advice which may be supplied to Client.
- F. This Agreement constitutes the entire agreement between the parties with regard to this subject matter and no other agreement, statement, promise or practice between the parties relating to the subject matter shall be binding on the parties. This Agreement may be changed only by a written amendment signed by both parties, with the exception of any change to this Agreement sent by NHRS to Client in writing, in a manner in which proof of delivery can be established and which shall be deemed to have amended this Agreement and accepted by Client if not objected to in writing by Client. Notice of such objection must be received by NHRS within FOURTEEN (14) days of Client's receipt of NHRS' notification of change (proof of NHRS' receipt of objection must be supplied by Client upon request of NHRS).
- G. The failure by either party at any time to require strict performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any subsequent breach nor affect the effectiveness of this Agreement, or any part thereof, or prejudice either party as regards to any subsequent action.
- H. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida both as to interpretation and performance (excluding its choice of law provisions if such law would result in the application of the law of a jurisdiction other than Florida) and venue shall be in the applicable court in Collier County, Florida. The Parties hereby irrevocably waive, to the fullest extent they may do so, the defense of an inconvenient forum.
- I. In the event of any lawsuit or other proceeding between the Parties, including, but not limited to, any action by either Party to enforce the provisions of this Agreement, any party who shall substantially prevail in such lawsuit or other proceeding shall be entitled to an award of its costs and reasonable attorney's fees incurred at all levels of proceedings.
- J. Any notice or demand given hereunder shall be accomplished by the personal delivery in writing (with written receipt) or by other delivery with proof of delivery or attempted delivery to the address set forth herein for the other party, and shall be deemed effective upon proof of attempted delivery (actual delivery to be made as soon as is practicable following attempted delivery).
- K. No rights of any third party are created by this Agreement and no person not a party to this Agreement may rely on any aspect of this Agreement notwithstanding any representation, written or oral, to the contrary.
- L. In the event that any provision contained in this Agreement is held to be unenforceable by a court of competent jurisdiction, the validity, legality, or enforceability of the remainder of this Agreement shall in no way be affected or impaired thereby.
- M. Any false statement or omission with regard to any information supplied by Client to NHRS in anticipation of Client's contracting with NHRS or at any other time shall be deemed a material breach of this Agreement and NHRS, at its option, may terminate this Agreement and seek appropriate relief.
- N. Any and all inventions, discoveries, improvements, copyrightable works and creations (hereafter

referred to as "Intellectual Property") which Client has previously, solely or jointly, conceived or made or may conceive or make during the period of this Agreement, whether or not accomplished through the use of assigned employees, shall be the sole and exclusive property of Client. Client shall have sole and exclusive responsibility for protecting its rights to such Intellectual Property and to all of its other assets and NHRS shall have no responsibility with regard to same.

- O. Client may not assign this Agreement nor its rights and duties hereunder, nor any interest herein, without the prior written consent of NHRS. Client will provide at least FOURTEEN (14) days' prior written notice to NHRS of any sale of Client. Where NHRS agrees in writing to a successor becoming obligated to comply with this Agreement, this Agreement may be terminated by NHRS at any time, in NHRS's sole discretion, during the first SIXTY (60) days following successor's assumption of this Agreement. Thereafter, this Agreement may only be terminated by NHRS in conformity with the terms of this Agreement.
- P. Client represents that there is no existing employee who is subject to collective bargaining or who is subject to any collective bargaining agreement at any Client worksite. This Agreement shall have no effect on any collective bargaining agreement between Client and any union which arises during the term of this Agreement. Any responsibility and/or liability with regard to any union contract and with regard to any employment contract between Client and any assigned employee shall be the exclusive responsibility and/or liability of Client. NHRS shall not be a party to any such contract. NHRS will have no responsibility or liability in connection with or arising out of any such employment contract, except to prepare checks and to pay any such employee who is a party to such a contract, in conformity with information provided by Client. With respect to any employment contract between Client and any assigned employee, and with regard to any union contract, Client shall be acting solely on its own volition and responsibility with regard to all aspects of any such contract, including but not limited to its negotiation, compliance, implementation, renewal, enforcement, and termination. The Parties agree that NHRS is not and will not become a paying entity or contributing employer within the meaning of the Multi-Employer Pension Plan Amendment Act and does not and will not have any withdrawal liability under this Act or any comparable law.
- Q. Client represents that it is not a local, state, or federal contractor and that prior to becoming a local, state, or federal contractor Client will immediately notify NHRS in writing as Client understands that there may be specific E-Verify obligations and other obligations to which such contractors must adhere.
- R. In recognition of the effort that is necessary to provide the services described in this Agreement, NHRS and Client agree to cooperate with each other. This duty to cooperate shall encompass the obligation of the other party to timely supply documents, witnesses and such other evidence as is necessary for a party to properly fulfill its obligations under this Agreement.
- S. Client represents that it has met any and all prior premium and fee obligations with regard to workers' compensation premiums and employee leasing/professional employer organization payments, to all prior employee leasing/professional employer organizations and workers' compensation carriers, with which Client has previously had a contractual relationship.
- T. Upon any request by NHRS or its assigns, Client shall allow an on-site physical examination of such books, records, documents and other information sources deemed appropriate by NHRS and/or its assigns to aid NHRS and its assigns in the determination of proper workers' compensation classifications of assigned employees and to aid in the determination of payroll amounts paid to such assigned employees to the extent set forth in Section 440.381, Florida Statutes, and the rules promulgated thereunder. Such examination shall be strictly for the purposes of determining proper workers' compensation classifications of assigned employees and to aid in the determination of payroll amounts paid to such assigned employees. Client shall

remain obligated to NHRS for any misclassification, delinquency and/or unpaid premium amount found in the audit. This provision shall survive the expiration or other termination of this Agreement.

- U. This Agreement shall be valid and enforceable only upon signature by an authorized Controlling Person of NHRS (licensed pursuant to Florida law). Any individual signing this Agreement on behalf of Client represents, warrants and guarantees that she or he has full authority to do so. Each party represents that it has the power and actual authority to enter into this Agreement and to be bound by the conditions and terms contained herein.
- V. With respect to any dispute concerning the meaning of this Agreement, this Agreement shall be interpreted as a whole with reference to its relevant provisions and in accordance with its fair meaning, and no part of this Agreement shall be construed against NHRS on the basis that NHRS drafted it. This Agreement shall be viewed as if prepared jointly by NHRS and Client.
- W. The subject headings of the sections and subsections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

**AGREED TO:**

By: \_\_\_\_\_

Melvin H. Willis, President  
658 W. Indiantown Rd Suite 204  
Jupiter, FL 33458

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated herein are true. In addition, the foregoing Agreement is agreed to.

**CLIENT BUSINESS NAME:** \_\_\_\_\_

OWNER SIGNATURE: \_\_\_\_\_ Date: \_\_\_\_\_

CLIENT OWNER NAME: \_\_\_\_\_

\_\_\_\_\_  
CLIENT STREET ADDRESS, CITY, STATE, ZIP

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## PERSONAL GUARANTY

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and between NHRS and \_\_\_\_\_ (hereafter referred to as "Guarantor").

In consideration of the promises of the parties contained in this Agreement, the parties agree as follows:

WHEREAS, Guarantor acknowledges that Guarantor is a direct beneficiary of the Service Agreement entered into between NHRS and \_\_\_\_\_ ("Client") on March 26, 2013, and understands that NHRS would be unwilling to enter into or continue the Service Agreement without this Personal Guaranty being signed, and whereas Guarantor is desirous of ensuring the fulfillment of all obligations of Client, accordingly:

a. Guarantor agrees that in the event Client has not fully complied with all requirements of the Service Agreement, including but not limited to the failure to timely make all payments due NHRS pursuant to the Service Agreement, Guarantor agrees that Guarantor will upon demand by NHRS, pay to NHRS all such payments not made by Client and in all other respects will guarantee fulfillment of the obligations of Client as set forth in the Service Agreement. This Guaranty shall be applicable to all obligations of Client to NHRS, and includes but is not limited to all obligations of Client which become due to NHRS by Client.

b. This Guaranty is an absolute and unconditional guarantee of payment and of performance. It shall be enforceable against Guarantor without the necessity of any suit or proceedings on NHRS' part of any kind or nature whatsoever against Client, its successors and assigns, and without the necessity of any notice of nonpayment, nonperformance or nonobservance or any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of the Guarantor hereunder shall in no manner be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by NHRS against Client, or against Client's successors and assigns, of any of the rights or remedies reserved to NHRS pursuant to the provisions of said Service Agreement with Client, or by relief to Client from any of Client's obligations under the Service Agreement, or otherwise by: (a) the release or discharge of Client in any creditors' proceedings, receivership, bankruptcy or other proceedings; (b) the impairment, limitation or modification of the liability of Client or any bankruptcy, or of any remedy for the enforcement of Client's said liability under the Service Agreement, resulting from the operation of any present or future provision of the National Bankruptcy Act or any other statute, or from the decision of any court; or (c) the rejection or disaffirmance of the Service Agreement in any proceedings.

c. All debts and liabilities, present and future, of Client to the Guarantor are hereby subordinated and postponed to the liabilities of Client to NHRS, and all moneys received by the Guarantor or its representatives, successors or assigns thereon, shall be received as trustees for NHRS and shall be paid over to NHRS; and the Guarantor further agrees, upon any liquidation or distributions of Client's assets, to assign to NHRS upon NHRS' request, all claims on account of all such debts and liabilities to the end that NHRS shall receive all dividends and payments in full of all liabilities of Client to NHRS; and this Guaranty shall constitute such assignment in the event the Guarantor shall fail to execute and deliver such other or further assignment of such claims as NHRS may request.

d. Guarantor agrees to pay reasonable attorney's fees and all other costs and expenses that may be incurred by NHRS in the enforcement of this Guaranty or in the

collection of any debts or liabilities from Client or Guarantor.

e. This Guaranty may be assigned by NHRS, along with any one or several or all of the indebtedness and principal obligations that it guarantees. When so assigned, the Guarantor shall be bound as above to the assignees without in any manner affecting Guarantor's liabilities hereunder or any part of any of Guarantor's obligations retained by NHRS.

f. This Guaranty shall inure to the benefit of and bind the heirs, administrators, executors, successors and assigns of NHRS and Guarantor, and shall be construed as the joint and several obligation of each of the undersigned Guarantors if there is more than one.

g. This Guaranty shall survive the termination or expiration of any Service Agreement between NHRS and Client.

**AGREED TO:**

**AGREED TO:**

**CLIENT:** \_\_\_\_\_ **PEO:** \_\_\_\_\_

**Sig:** \_\_\_\_\_ **Date:** \_\_\_\_\_ **Sig:** \_\_\_\_\_ **Date:** \_\_\_\_\_

\_\_\_\_\_  
**Please Print Name**

**Melvin Willis, its President**